

DIVISION OF LOCAL GOVERNMENT SERVICES

LOCAL FINANCE BOARD

**Submission of Electronic Proposals for Sale of Bonds; Use of Financial Surety
Bonds in Electronic Bond Sale Auctions**

Proposed New Rules: N.J.A.C. 5:30-2.9 and 2.10

Authorized By: Local Finance Board, Matthew U. Watkins, Chair

Authority: N.J.S.A. 40A:2-27(c), 40A:2-32(a)(2), 52:27BB-10(z), and 40A:5A-26

Calendar Reference: See Summary below for explanation of exception to calendar
requirement

Proposal Number: PRN 2003-391

Submit comments by December 5, 2003 to:

Patricia Parkin McNamara, Executive Secretary
Local Finance Board
Department of Community Affairs
PO Box 803
Trenton, New Jersey 08625-0803

The agency proposal follows:

Summary

Amendments to the Local Bond Law (N.J.S.A. 40A:2-1 et seq.), as prescribed by P.L. 2003, c.15, authorize the Local Finance Board to adopt rules regulating the sale of bonds through electronic proposals (N.J.S.A. 40A:2-27), and the issuance of financial surety bonds as bid deposits, in lieu of a certified check, cashier's check or treasurer's check (N.J.S.A. 40A:2-32).

The amendments to N.J.S.A. 40A:2-27 provide new ways for local units (including municipalities, counties, authorities and fire districts) to sell bonds. Local units can now sell bonds through electronically submitted proposals, in addition to the traditional submissions of sealed bids. The amendments allow local units to take advantage of commercial services that permit electronic auctions or submission of electronic sealed bids, in accordance with any rules promulgated by the Local Finance Board regulating the terms and conditions of such electronic submissions.

N.J.S.A. 40A:2-32 provides for bid deposits to be part of a bond sale proposal. Because electronic bids do not permit the use of a cash deposit instrument, the amendments authorize the Board to adopt rules to allow local units to accept a financial surety bond in lieu of a certified, cashier's or treasurer's check.

In response to these changes to the Local Bond Law, the Board is proposing to adopt new rules at N.J.A.C. 5:30-2.9 and 2.10 governing the submission of electronic proposals and the use of financial surety bonds in electronic bond sale auctions.

The proposed new rule at N.J.A.C. 5:30-2.9, Submission of electronic proposals for sale of bonds, requires local units and authorities to use only those organizations that have obtained the Director's approval to provide electronic securities bidding services for the sale of bonds through electronic auction.

Prior to allowing New Jersey local units to conduct an open or closed electronic auction, bidding service providers are required obtain approval of the Director. The rule requires bidding services to file an application with the Director, on a form prescribed by the Director. Proposed N.J.A.C. 5:30-2.9(b) sets forth the conditions by which the Director shall approve such application. Proposed N.J.A.C. 5:30-2.9(c) requires the Director to post on the Local Finance Board's website, information about bidding service providers that have been approved for use by local units and authorities.

The proposed new rule at N.J.A.C. 5:30-2.10, Use of financial surety bonds in electronic bond sale auctions, establishes requirements that allow local units to accept a financial surety bond as a bid deposit, pursuant to N.J.S.A. 40A:2-32(a). Proposed N.J.A.C. 5:30-2.10(b) requires that such bonds be issued by an insurance company or other guarantor licensed and authorized to do business in New Jersey, and approved by the Director. This provision also requires the Director to prepare an application for such

purposes. Proposed N.J.A.C. 5:30-2.10(c) sets forth the conditions by which the Director shall approve applications for financial surety bonds.

As the Board is providing a 60-day comment period for these proposed new rules, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rule at N.J.A.C. 5:30-2.9 will have a positive social impact in that it sets forth requirements for ensuring that electronic bond sales are conducted by knowledgeable and reputable service providers. The rule enables the Director to request and evaluate information concerning the technological processes, security practices and methods that are used by the service provider in conducting open and closed auctions. This will help to assure that service providers are duly qualified in terms of their business experience, financial strength and reliability. An approved list of service providers will be posted at the Board's website for viewing by local units. The ready availability of such information will produce a cost savings to local units by eliminating the need to research and select a qualified electronic securities bidding service. The time and money saved is ultimately passed on to the local taxpayers in the form of stabilized or reduced taxes.

The proposed new rule at N.J.A.C. 5:30-2.10 also has a positive social impact in that it allows local units to accept financial surety bonds in lieu of checks for bid deposits. The rule requires that all insurance companies or other such guarantors for the bonds must be approved by the Director, and set forth the conditions for approval. As such, the rule helps to ensure the integrity of bond guarantors, thereby insulating the local unit and its taxpayers from any loss resulting from the failure of the bidder to meet the terms of the bid.

Economic Impact

The proposed rule at N.J.A.C. 5:30-2.9 requires the Director to prepare an application for the approval of electronic bidding service providers. Although the staff time and effort involved in fulfilling this task should be negligible and virtually inconsequential in terms of economic cost, any added expense or time of reviewing such applications and determining the acceptability of the service provider can be assimilated by existing staff and, therefore, there should be no imposition on the Director's current operating budget. This same impact is applicable to the proposed rule at N.J.A.C. 5:30-2.10, where the Director is required to approve the insurance company or any other such guarantor for the financial surety bonds.

Local units who opt to utilize electronic auctions for the sale of bonds will benefit economically from the proposed new rules. Once the Director posts a list of approved service providers, the local unit can select directly from the list without having to endure

the process of qualifying providers. Local units may incur some minor costs, however, in procuring the services of an electronic securities bidding firm to structure and coordinate the bond auction. Such costs would be offset by the lower interest bids on the bond that will accrue from having an instantaneous, larger and more competitive bidding market, which will be derived through the use of Internet technologies.

The proposed new rules may impose a minor cost burden on electronic securities bidding service providers who are required to prepare and submit an application to the Director in order to operate an open or closed electronic auction, pursuant to proposed N.J.A.C. 5:30-2.9. The Director does not anticipate that the requirements set forth in the application will necessitate extensive data gathering or other research that will economically burden service providers. As set forth at proposed N.J.A.C. 5:30-2.9(b), the purpose of the application is to ensure that the bidding service provides a secure, open and competitive opportunity for qualified bidders to submit proposals, and that the requirements and conditions of the auction are in accordance with the provisions of the Local Bond Law. The Board does not expect that there would be any measurable economic impact associated with providing such information.

The proposed new rule at N.J.A.C. 5:30-2.10 may impose a minor cost burden on insurance companies and other guarantors of financial surety bonds who are required to submit an application for the Director's approval, prior to the issuance of any such bonds. As prescribed at proposed N.J.A.C. 5:30-2.10(b), the application shall demonstrate the financial capability and experience of the issuer in issuing financial surety bonds to

guarantee a bid deposit on the sale of government securities, and that the issuers possess the capability to respond to requests for the provision of financial surety bonds in a timely and secure manner for the use of bidders who seek to purchase local unit securities. Any cost implications related to providing such information to the Director should be minimal, as the guarantors are usually large corporations whose records in dealing with financial surety bonds should be easily and readily documented. Accordingly, the Board does not foresee any adverse economic impacts on the guarantors of the financial surety bonds, as a result of these application requirements.

Federal Standards Statement

A Federal standards statement is not required because the proposed new rules are governed by the Local Bond Law, N.J.S.A. 40A:2-1 et seq., and are not subject to any Federal standards or requirements.

Jobs Impact

Although the proposed rules establish requirements for State and local governments with respect to preparing, reviewing and approving applications, and for private sector firms with respect to completing applications, the workload involved in these efforts is not expected to be onerous and, as such, will have no bearing on the creation or loss of jobs.

Agriculture Industry Impact

The proposed new rules deal with electronic bond sale auctions and the Board does not anticipate that they will have any impact on the State's agriculture industry.

Regulatory Flexibility Statement

The proposed new rules impose reporting requirements on electronic securities bidding service providers and on financial surety bond issuers, some of whom may be small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. N.J.A.C. 5:30-2.9 requires electronic securities bidding service providers to compile and submit information to the Director regarding the technology and security practices maintained by the bidding service, the requirements to be established for bidding by bidders, and the methods by which auction sales are conducted. These requirements are applicable to all businesses, regardless of size, and are essential to determining the acceptability of the service provider and the appropriateness and integrity of the auction process. As noted in the Economic Impact, the cost of compliance with the proposed new rule is expected to be minimal. The services affected by these rules, including electronic securities bidding services and financial surety bond services, are already being offered by various reputable business organizations, thereby precluding the need for such organizations to hire additional staff or to otherwise engage the support of outside professionals. In effect, the technical wherewithal is already in place.

N.J.A.C. 5:30-2.10 requires the issuers of financial surety bonds to compile and submit information to the Director to demonstrate their financial capability and experience in issuing financial surety bonds, and their ability to provide such bonds in a timely and secure manner to bidders who are seeking to purchase local unit securities. The rule applies equally to all guarantors, regardless of size, and is necessary to ensure that all bond issuers are duly qualified, and that the local unit is properly protected from loss in the event that a bidder fails to comply with the terms of the bid. The Board does not anticipate that the proposed new rules will cause any cost burdens to business entities, as the type of information required by the rules entails documentation of past experiences, which should be readily available for most firms.

Smart Growth Impact

The proposed new rules have no impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposed new rules follows:

5:30-2.9 Submission of electronic proposals for sale of bonds

(a) Local units (including municipalities, counties, authorities and fire districts) planning to issue bonds may receive proposals for the competitive or negotiated sale of such bonds through an open or closed electronic auction managed by a nationally

recognized electronic securities bidding service approved by the Director. Bidding services desiring to operate an open or closed electronic auction shall apply to the Director for authorization to do so by filing an application with the Director. The Director shall make available an application form that provides the Director with information regarding the technology and security practices maintained by the bidding service, the requirements to be established for bidding by bidders, the methods by which auction sales are conducted, the experience of the bidding service in conducting electronic auctions of bonds, and other information the Director may deem relevant. For the purposes of this section, a closed auction includes the submission of electronically sealed bids that are opened at a set time and an open auction is where bidders submit bids against each other in real time.

(b) If the Director determines that the requirements and conditions of the auction are in accordance with the provisions of the Local Bond Law and the bidding service provides a secure, open and competitive opportunity for qualified bidders to submit proposals, the application shall be deemed approved. Requirements that bidders be members of the National Association of Security Dealers, have a business relationship with the Depository Trust Corporation, or require participation in a similar financial industry-based program shall not be construed as limiting competition.

(c) The Director shall post information regarding the nationally recognized electronic securities bidding services that have been approved for use by local units on the Local Finance Board website.

5:30-2.10 Use of financial surety bonds in electronic bond sale auctions

(a) Subject to the requirements of this section, a local unit may accept a financial surety bond in lieu of a certified, cashier's or treasurer's check as a bid deposit as required by N.J.S.A. 40A:2-32(a).

(b) The financial surety bond must be provided by an insurance company or other guarantor that is licensed and authorized to do business in the State of New Jersey and approved by the Director. The Director shall develop and make available an application form for issuers of financial surety bonds. Applicants shall demonstrate to the satisfaction of the Director that they possess the requisite financial capability and experience in issuing financial surety bonds to guarantee a bid deposit on the sale of government securities and further, that they possess the capability to respond to requests for the provision of financial surety bonds in a timely and secure manner for the use of bidders who seek to purchase local unit securities.

(c) Acceptance of a financial surety bond by a local unit shall be subject to the following conditions:

1. The issuer of the financial surety bond shall have received approval of the Director to issue financial surety bonds;
2. Financial surety bonds shall be made payable to the order of the issuing local unit in order for a bid to be considered;

3. The requirement or option to use a financial surety bond in the bond sale shall be included in the notice of sale of the bonds;
4. Proof of the financial surety bond must be submitted to the local unit or its agent by a fixed time on the day prior to the opening of the bids;
5. Each financial surety bond must identify the bidder whose deposit is guaranteed by the financial surety bond, and shall state the time and date when it will expire. Said date shall not be earlier than the date for submission of the required deposit;
6. The notice of sale of the bonds shall require the successful bidder using a financial surety bond to submit its deposit to the local unit in such form and a time required by the local unit, which shall be sooner, than but no later than 48 hours of the award of the bonds;
7. If such deposit is not received by the stated time to satisfy the deposit requirement, the local unit may draw the financial surety bond;
8. The deposit of the successful bidder will be applied to the purchase price of the bonds and no interest will be paid thereon; and
9. The local unit shall retain the deposit as liquidated damages should the bidder fail to comply with the terms of the bid.